***THE HON'BLE SRI JUSTICE N.V. RAMANA**

+WRIT PETITION NO.16061 OF 2006

%Dated 05.01.2007

Sk.Fareed, s/o. Sk.Ali, aged about 55 years, Occ. Rtd.Driver, E.No.47252, r/o.Devarkonda, Nalgonda district.

..... PETITIONER

VERSUS

$ 1 The Managing Director, APSRTC, Musheerabad, Hyderabad & Ors. **.....RESPONDENTS**

! Counsel for Petitioner: Sri V. Narsimha Goud

^ Counsel for Respondents: Sri V.T.M. Prasad, Standing Counsel for APSRTC.

< GIST:

> HEAD NOTE:

THE HON'BLE SRI JUSTICE N.V.RAMANA

W.P No. 16061 of 2006

O r d e r:

The petitioner, who joined the service of the respondents-Corporation as Driver in 1974, applied for retirement on 21.10.2003 due to defective vision, and he was retired from service on 27.10.2003. Before he retired from service, the respondents issued notification in PD No. 14/2003, dated 08.10.2003, informing that the

Board vide Resolution No. 128/2003, dated 28.07.2003, has accorded approval for amending Regulation 6A(5)(b) of the APSRTC Employees (Service) Regulations, 1964 (hereinafter referred to as 'the Regulations'), and notified the amendment, which provided better benefits to medical unfit Drivers. In terms of the above amended Regulation 6A(5)(b) of the Regulations, the petitioner states that he took retirement and applied for grant of additional monetary benefits in lieu of alternative employment, as provided under Section 47 of the Persons with Disabilities Act, 1995, but the respondents did not pay the additional monetary benefits. The petitioner states that the respondents issued another Circular in PD No. 40/2005, dated 26.08.2005, after obtaining approval from the Government, reiterating the benefits payable under notification in PD No. 14/2003, dated 08.10.2003. While so, the 2nd respondent, namely the Regional Manager, on the clarification sought by the 2nd respondent, namely the Depot Manager, whether additional monetary benefits can be paid to the petitioner, vide proceedings dated 10.07.2006, informed that the petitioner cannot be paid the additional monetary benefits as he was found medically unfit on 07.10.2003 i.e. a day before the amended Regulation 6A(5)(b) of the Regulations, came into force i.e. 08.10.2003. Assailing these proceedings, the petitioner filed this writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC.

The learned counsel for the petitioner submitted that though the petitioner was medically invalidated on 07.10.2003, he having been retired from service w.e.f. 27.10.2003, long after the amended Regulation 6A(5)(b) of the Regulations coming into force i.e. from 08.10.2003, is entitled to be granted the additional monetary benefits,

and the action of the respondents in rejecting his case for grant of additional monetary benefits on the ground that he was found medically unfit on 07.10.2003 i.e. a day before the amended Regulation 6A(5)(b) of the Regulations came into force i.e. on 08.10.2003, is illegal and arbitrary, and more so when the amended Regulation 6A(5)(b) of the Regulations, which provided for grant of additional monetary benefits, came to be approved by the Government with effect from 08.10.2003. He, thus prayed that the impugned order be set aside and the writ petition be allowed.

The respondents filed counter. The learned Standing Counsel for the respondents-APSRTC reiterating the stand taken by the respondents in their counter submitted the amended

Regulation 6A(5)(b) of the Regulations came into force from 08.10.2003. Though the petitioner was retired from service on 27.10.2003, i.e. twenty days after notifying the amendment on 27.10.2003, the fact remains, he was found medically unfit on 07.10.2003, and having regard to the fact that the amendment came into effect from 08.10.2003, i.e. a day after the petitioner was found medically unfit, he was not given the benefit, and no exception can be taken to the impugned proceedings, which informed that the petitioner is not entitled to the additional monetary benefits.

In the background of the pleadings of the respective parties, the only short question that falls for consideration in this writ petition is whether the benefit of the amended Regulation 6A(5)(b) of the Regulations, which provided for grant of additional monetary benefits, to employees who are to be retired on being found medically unfit, is extendable to those employees who are found to be medically unfit from the day it came into force i.e. from 08.10.2003 or is not extendable to those who were found medically unfit much before its issuance, but

retired from service after its issuance?

The petitioner, admittedly, was found medically unfit on 07.10.2003. A day after the petitioner was found medically unfit, the 1st respondent issued notification in PD No. 14/2003, dated 08.10.2003, notifying that the Board vide its Resolution No. 128/2003, dated 28.07.2003, has accorded approval for implementation of the amended Regulation 6A(5)(b) of the Regulations, with immediate effect, pending sanction of the Government. The Government through its Principal Secretary in the TR & B Department, vide Letter No. 11073/Tr.II(2)/2003-4, dated 24.06.2005, accorded approval for the amended Regulation 6A(5)(b) of the Regulations w.e.f. 08.10.2003. The respondents also vide Circular issued in PD No. 40/2005, dated 26.08.2005, reiterated that the Government has approved the amendment to Regulation 6A(5)(b) of the Regulations w.e.f. 08.10.2003. Thus, it is clear that the amended Regulation 6A(5)(b) of the Regulations has come into force from 08.10.2003. Though the petitioner was found medically unfit on 07.10.2003, i.e. a day before the amendment came into force, the fact remains, the petitioner applied for retirement on medical grounds on 21.10.2003, and his request having been accepted, he was retired from service on 27.10.2003. Inasmuch as the petitioner, who was found medically unfit on 07.10.2003, was retired from service from 27.10.2003, i.e. much after the amendment came into force from 08.10.2003, the respondents cannot be allowed to contend that the amendment, which provided for payment of additional benefits to those employees who are retired on medical grounds, is applicable only to those employees, who are found medically unfit from the day the amendment came to be notified i.e. 08.10.1003.

In the matter of settlement of benefits to an employee on his retirement, the respondents cannot dispute the fact that the employee who is retired, is entitled to claim all the benefits, which he is entitled to under the different circulars, which were or are in force as on the date of his retirement. It is not the day on which an employee is found medically unfit, but the day on which he is retired from service on being found medically unfit is important. Since the petitioner was in the employment of the respondents on 08.10.2003 on the day when the amended Regulation came into force, and was retired from service much after the said date on 27.10.2003, the respondents cannot be allowed to say that the petitioner is not entitled to the benefit of the amended Regulation because he was found medically unfit a day before the amendment came into force. In that view of the matter, the proceedings dated 10.07.2003 of the Personnel Officer, working in the office of the 2nd respondent, namely the Regional Manager, informing the 3rd respondent, namely the Depot Manager, that the petitioner having been found medically unfit on 07.10.2003 i.e. a day before the amendment was notified on 08.10.2003, is not entitled to the benefit of the amendment, which provided for payment of additional monetary benefits in lieu of alternative employment, to employees who are found medically unfit, cannot be sustained, and is accordingly quashed.

Accordingly, the writ petition is allowed. The respondents are in terms of Regulation 6A(5)(b) of the Regulations are directed to pay the additional monetary benefits to the petitioner in lieu of alternative employment, as mandated under Section 47 of the Persons with Disabilities Act, 1995, within a period of one month from the date of receipt of a copy of this order. No costs.

_____

N.V. RAMANA, J.

Dated: 05th November, 2006.

Note:

Mark LR copy.
(B/o)
KSR/ISL